

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JEROME WILSON

Petitioner,

No. CIV S-05-0114 DFL CMK P

vs.

SCOTT KERNAN,

Defendant.

FINDINGS & RECOMMENDATIONS

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Plaintiff, a state prisoner proceeding pro se, filed a complaint titled "Petition for a Writ of Justice on January 18, 2005. He did not, however, pay the filing fee or submit an application to proceed in forma pauperis. The court originally construed the complaint as a petition for a writ of habeas corpus and directed plaintiff to re-file on the proper form for a writ of habeas corpus and to pay the filing fee or request to proceed in forma pauperis.

On February 14, 2005, plaintiff filed a motion which notified the court that he had intended his January 18, 2005 motion to be a civil rights complaint. Plaintiff did not submit the required filing fee or request to proceed in forma pauperis. On March 9, 2005, the court directed plaintiff to submit a completed in forma pauperis application and a certified copy of his prison

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1 trust account statement within thirty days from the date of the order. Plaintiff was notified that  
2 failure to comply with the order would result in a recommendation that this action be dismissed  
3 without prejudice.

4 Petitioner has not submitted an application to proceed in forma pauperis.  
5 Accordingly, IT IS RECOMMENDED that this action be dismissed without prejudice.

6 These findings and recommendations will be submitted to the United States  
7 District Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within  
8 twenty days after being served with these findings and recommendations, any party may file  
9 written objections with the court and serve a copy on all parties. Such a document should be  
10 captioned "Objections to Findings and Recommendations." Any reply to the objections shall be  
11 served and filed within ten days after service of the objections. The parties are advised that  
12 failure to file objections within the specified time may waive the right to appeal the District  
13 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

14 DATED: April 27, 2005  
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17 /s/ CRAIG M. KELLISON  
18 Craig M. Kellison  
19 UNITED STATES MAGISTRATE JUDGE  
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